IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1830 of 2004
In
SPECIAL CIVIL APPLICATION No. 728 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
DR.M.R. JADEJA - Respondent(s)

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Appearance :
MS.ASMITA PATEL, AGP for Appellants
MR GM JOSHI for Respondent

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 31/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. By this appeal under clause 15 of the Letters Patent, the appellant State of Gujarat has challenged the judgment and order dated 26th July, 2004 passed by the learned Single Judge in the above numbered Special Civil Application whereby it has been held that the respondent/original petitioner shall be entitled to receive interest at 9% per annum over the amount of gratuity for the period commencing from 1st Feb, 2000 till the date of payment i.e. 15th March, 2002.

2. The facts giving rise to the present appeal are that the respondent was working as a Medical Officer under the State Government and retired on 31st October, 1999 on attaining the age of superannuation. Prior to his retirement, on 30th October, 1999, a disciplinary proceeding was initiated against the respondent which culminated into an order dated 1st October, 2001 whereby the respondent was visited with punishment of reduction in pension of Rs.100/- per month for a period of one year. After the said order of punishment the Competent Authority by an order dated 16th February, 2002 sanctioned payment of gratuity in the sum of Rs.3,50,000/- which was paid to the respondent on 15th March, 2002. It appears that during the pendency of the

disciplinary proceeding, the respondent had made an application for pension pursuant to which by an order dated 18th February, 2000 provisional pension equivalent to 100% of the pension was sanctioned in favour of the respondent.

3. According to the respondent the appellants had paid the amount of pension and gratuity belatedly after a lapse of 28 months from the date of retirement and therefore, he was entitled to interest on the amount of pension and gratuity. He, therefore approached this Court by way of the above numbered writ petition praying for the following substantial relief:

> *"12. Under the circumstances, the petitioner most respectfully prays that Your Lordsships may :*
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> *(a)Be pleased to admit this petition;*
> *(b)Be pleased to issue appropriate writ, order or direction in the nature of mandamus declaring the action of the respondents in withholding entire amount of pension and gratuity under the pretext of pending departmental enquiry as illegal ab initio and further be pleased to grant interest at the rate of 12% from 1.11.1999 to 15.3.2002 and till actual payment on the amount of pension and gratuity amounting to 7,86,202/- without further delay;"*

4. Upon consideration of the rival submissions as well as the pleadings and documents on record, the learned Single Judge held that it cannot be said that the pension was sanctioned after an inordinate delay and therefore, the respondent is not entitled to interest over the amount of monthly pension received. However, insofar as the claim for interest on the amount of gratuity is concerned, the learned Single Judge held as follows:

> *"As to the amount of gratuity, Rule 189-B of the Bombay Civil Services Rules enjoins upon the State Government not to release the amount of gratuity pending the disciplinary inquiry. The Government Resolution dated 17th July, 1991 relied upon by the respondent envisages payment of gratuity within 3 months from the date the competent authority sanctions the payment after completion of the disciplinary proceeding. The Government Resolution dated 20th December, 2002 (annexed to the counter affidavit) provides that in case where the amount of gratuity is withheld under Rule 189-B of the Bombay Civil Services Rules and such amount is sanctioned after the completion of the disciplinary action, the delinquent shall be entitled to receive interest @ 9% per annum after the expiry of 3 months from the date of retirement. The propriety demands that the State Government should have followed its*

resolution and paid the interest to the petitioner over the amount of gratuity paid after completion of the disciplinary action.

In above view of the matter, the petitioner shall be entitled to receive interest @ 9% per annum over the amount of gratuity for the period commencing from 1st February, 2000 till the date of payment i.e. 15th March, 2002. Such amount shall be paid forthwith but not later than 21st August, 2004.

In the event the respondents fail to pay interest over the amount of gratuity as aforesaid by 21st August, 2004, the petitioner shall be entitled to receive cost of Rs.15=00 for each day of delay."

5. The judgement and order insofar as the same holds that the respondent is entitled to receive interest @ 9% per annum over the amount of gratuity for the period commencing from 1st February, 2000 till the date of payment, that is, 15th March, 2002, and the further directions consequent thereto, has given rise to the present appeal.

6. Heard, Ms. Asmita Patel learned Assistant Government Pleader for the appellants and Mr. G.M. Joshi learned Advocate for the respondent.

7. Assailing the impugned judgement and order, the learned Assistant Government Pleader has submitted that the learned Single Judge has misconstrued the provisions of the Government Resolutions, which had been relied upon by the appellants. It was submitted that as per the Government Resolution dated 17.7.1991, if any Government employee is not declared innocent in disciplinary or judicial proceedings carried out against him and the competent authority sanctions payment of gratuity, the amount of gratuity shall be due from the date of the said order. If the amount of gratuity is paid after three months of the said order the concerned employee shall be entitled to interest at the rate prescribed therein. It was submitted that in the present case, the competent authority had sanctioned the amount of gratuity on 16.2.2002 and the same was paid on 15.3.2002, well within a period of three months thereof. Hence, there was no liability to pay any interest to the respondent. It was accordingly submitted that the appeal be allowed and the writ petition filed by the respondent, be dismissed.

8. As against that learned Advocate Mr. G.M. Joshi for the respondent has supported the impugned judgement and order and has submitted that the same is just, legal and proper and in consonance with the provisions of the relevant Government Resolutions, and does not call for any intervention on the part of this Court. It was

accordingly submitted that the appeal deserves to be dismissed and the impugned judgement and order is required to be confirmed.

9. We have carefully considered of the submissions advanced by the learned Advocates for the parties and have thoroughly perused the record of the case.

10. As can be seen from the impugned judgement and order, the learned Single Judge has held that the respondent is entitled to payment of interest under the provisions of the Government Resolution dated 20th December, 2002. We may therefore, carefully peruse the relevant Government Resolutions in this regard and examine the entitlement or otherwise of the respondent under the said Government Resolutions.

11. The Government Resolution dated 17th July, 1991 makes provision for payment of interest at the prescribed rates for the deferred payment of gratuity in the circumstances detailed therein. The provision of said Government Resolution which is relevant for the purpose of the present case reads as under:

> *"In cases when the payment of gratuity is suspended till final disposal of disciplinary or judicial proceedings against Government employee or officer which are*

pending on the date of retirement:

(a) xxx

(b) xxx

(c) If the Government servant is not declared as fully innocent in disciplinary or judicial proceedings and the competent authority gives approval for paying gratuity, the amount of gratuity has to be considered to be due from the date the order for payment of gratuity is made by the competent authority. If the amount of gratuity is paid after three months from the date of the order of competent authority, interest shall be payable at the prescribed rate for the period beyond three months from the date of the order of competent authority."

12. The Government Resolution dated 20.12.2002 is a consolidated resolution covering all previous Government Resolutions in respect of the subject matter of interest on deferred payment of Death-Cum-Retirement Gratuity (D.C.R.G.). Clause 4 of the said Government Resolution insofar as the same is relevant for the purpose of the present case reads as under:

"(4) When due to pendency of proceedings against a Government employee/officer under

Rule 189-B on the date of retirement, payment of gratuity has been withheld till the final disposal thereof then:

(a) Where the Government employee has not been declared fully innocent in disciplinary or judicial proceedings carried out against him, and the competent authority has granted permission to pay the amount of gratuity, in such cases the amount of gratuity shall be considered to be due from the date the competent authority makes the order for payment of gratuity. When such amount of gratuity is paid after three months from the date of the order of the competent authority, then interest at the prescribed rate shall be required to be paid for the period beyond three months from the date of the order of the competent authority.

(b) In such cases when the Government employee is fully exonerated then, and it is decided to pay gratuity on the basis of such decision, the amount of gratuity shall be considered to be due from the date of retirement and interest shall be paid at the prescribed rate for the period beyond three months from such date. ”

13. Rule 189-B of the Bombay Civil Services Rules, 1959 provides that no gratuity or death-cum-retirement gratuity shall be paid to a Government servant against whom any departmental or judicial proceeding is instituted under Rule 189-A, until the final conclusion of such proceeding and issue of final orders thereon. Thus, where any departmental or judicial proceeding has been instituted against a Government employee, gratuity or DCRG can be paid only on the conclusion of such proceeding. Thus, till the conclusion of the said proceedings there cannot be any question of payment of gratuity. The Government Resolutions referred to hereinabove make provision for the various contingencies under which interest is required to be paid to a Government employee on delayed payment of DCRG. In the present case as the respondent has been visited with punishment at the conclusion of the disciplinary proceedings, he would be governed by those clauses of the Government Resolutions reproduced hereinabove which provide for cases wherein the Government servant is not fully exonerated. On a plain reading of the aforesaid provisions, it is amply clear that the liability to pay gratuity arises only from the date of the order of the competent authority granting permission to pay gratuity. Thereafter, a period of three months has been provided for making payment thereof, failing which the liability to

pay interest arises for the period thereafter.

14. In the facts of the present case, the competent authority has made the order sanctioning payment of gratuity on 16th February, 2002. The sum of Rs.3,50,000/- payable under the said order was paid to the respondent on 15th March, 2002 which is well within the period stipulated under the above referred Government Resolutions. Hence, it is evident that there can be no liability to pay interest on the said amount.

15. Evidently, the learned Single Judge has misread the provisions of the Government Resolution dated 20th December, 2002 by holding that under the said Resolution the delinquent shall be entitled to receive interest at the rate of 9% per annum after the expiry of three months from the date of retirement. It appears that instead of applying the provisions of clause 4(a), which are applicable to the facts of the present case, the learned Single Judge has applied the provisions of clause 4(b), which would be applicable in a case where the Government servant is fully exonerated. In the circumstances, the appellants are justified in contending that the learned Single Judge has misconstrued the provisions of the Government Resolution.

16. In the aforesaid premises we are of the view that as the respondent has not been fully

exonerated in the disciplinary proceeding, he became entitled to payment of gratuity only from the date of the order of the competent authority. Accordingly, under the provisions of the above-referred Government Resolutions, the entitlement to interest would arise only if the amount of gratuity is not paid within a period of three months from the date of the said order. In the present case on the basis of undisputed facts, it is evident that the amount has been paid within the stipulated period of three months from the date of the order of the competent authority; hence, the question of entitlement to interest on the amount of gratuity does not arise at all.

17. For the foregoing reasons, the appeal succeeds and deserves to be allowed. We accordingly allow the appeal and dismiss the writ petition filed by the respondent. There shall be no order as to costs throughout.

18. At this stage, the learned Assistant Government Pleader has drawn our attention to the order dated 28th February, 2005 passed by this Court in Civil Application No.7867 of 2004 made in the aforesaid Letters Patent Appeal, seeking stay of the impugned judgement and order. By the said order, this Court had granted stay on the condition that the appellant deposits the amount payable towards interest on delayed payment of gratuity under the impugned judgement and order,

before the Registry of this Court, and had further directed that the amount which may be deposited in the Registry will be invested properly by the Registrar General in such a Scheme of a Nationalized Bank where maximum interest could be yielded. It is stated that, in compliance with the said order, a sum of Rs.66,938/- [Rupees sixty six thousand nine hundred thirty eight only] payable under the impugned judgement and order had been deposited with the Registry of this Court by way of demand draft No.1103511 dated 23-3-2005 of the State Bank of India. In the circumstances, as the appellants have succeeded in the appeal, it is directed that the aforesaid amount deposited with the Registry of this Court, along with interest accrued thereon, shall be returned to the appellants by way of an account payee cheque, upon due verification thereof.

[A.M.KAPADIA, J.]

[HARSHA DEVANI, J.]

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